

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,)
v.) CRIMINAL ACTION NO.
PIERRE DE ROMEO SMITH,) 2:22cr122
Defendant.)

**TRANSCRIPT OF PROCEEDINGS
(Excerpt of Proceedings)**

Norfolk, Virginia

April 3, 2023

BEFORE: THE HONORABLE ELIZABETH W. HANES
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Emily Rebecca Gantt
Megan M. Montoya
Assistant United States Attorneys
Counsel for the United States

TREVOR JARED ROBINSON, ESQ.
By: Trevor J. Robinson
Counsel for the Defendant

1 | (Excerpt of proceedings.)

2 THE COURT: Ladies and gentlemen, the clerk is now
3 randomly selecting 12 individuals, and then both of the
4 parties will begin the process of essentially selecting the
5 jury, which allows them to strike or remove certain jurors
6 until a full 14 individuals are selected.

7 So, ladies and gentlemen, what will happen now is
8 the parties will spend some time reviewing and making
9 certain -- we call them preemptory challenges, which is
10 essentially that each side can remove a certain number of
11 jurors as we select the panel, and so I do want to remind you
12 that regardless of whether or not you are selected, each of
13 you, the fact that you're just here is an important function
14 of our judicial system and it's very valuable service to this
15 Court and also to the judicial system.

16 So while they're working on that process, I am just
17 going to briefly tell you some things about what your duties
18 are as a juror and then give you some preliminary
19 instructions that will guide you as you listen to the
20 evidence in this case. Now, I know that only a few of you
21 will be selected to serve as jurors but I like to give these
22 instructions now. Hopefully, those of you that are not
23 selected will still find it informative and interesting, but
24 I will ask everyone to pay attention because if you are
25 selected, it's important that you listened and understand the

1 instructions that I am going to give you now. So at the end
2 of the trial I will give you more detailed instructions and
3 those instructions will control how you deliberate, but I
4 will provide you some initial instructions now.

5 I will remind you that two of the individuals who
6 are selected will be designated as alternates, and that means
7 that you will sit with the jury, but an alternate juror, if
8 you don't replace a juror prior to the jury's retiring to
9 deliberate, you will be discharged and may not participate in
10 the deliberations. You are not permitted to participate in
11 the deliberations. And so you won't know whether you are an
12 alternate or not, but what will happen is at the end of the
13 trial as long as there haven't been any replacements made,
14 those two alternates will be excused prior to the
15 deliberations beginning.

16 It will be your duty as jurors to decide from the
17 evidence what the facts are in this case. You and you alone
18 will be the judges of the facts, and you will hear the
19 evidence, decide those facts, and then apply the facts to the
20 law of the case, and I will provide you the law at a later
21 time, and that's how you reach your verdict, and in doing so
22 you have to follow the law as you are given, whether or not
23 you agree with that law.

24 Now, don't take anything that I say or do during the
25 trial as indicating what your verdict should be. You

1 shouldn't be influenced by anything that I do, for example,
2 taking notes, not taking notes, questions that I ask, that
3 may or may not have anything to do with what's happening in
4 the trial. And so just understand that nothing I do should
5 influence you.

6 Now, it is my job sometimes to admonish an attorney
7 who out of zeal for his or her cause does something which is
8 not in keeping with the rules or evidence or procedure, but
9 you shouldn't let this have an effect on your evaluation of
10 the merits of the government's or the defendant's case.
11 Essentially, it's part of their job to zealously represent
12 their clients, and it's my job sometimes to tell them that
13 something they have done they can't do.

14 Now, you all will decide what the facts are from the
15 evidence that's presented here in court, and that evidence
16 can be testimony from witnesses, depositions, if any have
17 been taken, documents, or anything else received into
18 evidence such as exhibits, or any facts upon which the
19 attorneys agree or which I instruct you to accept.

20 There are some things that are not evidence, and so
21 the following things are not evidence and you should not
22 consider them as evidence in deciding this case: Any
23 statements or arguments made by the attorneys, any questions
24 of the attorneys or objections that the attorneys make, if I
25 instruct you to disregard a witness' testimony, you should

1 disregard the witness' testimony and not consider it,
2 anything that you see that may happen while court is not in
3 session, even if what you see or hear is done or said by one
4 of the parties or one of the witnesses.

5 Now, there are two types of evidence. There is
6 direct evidence and circumstantial evidence. So direct
7 evidence is testimony by a witness about what that witness
8 saw or heard or did themselves. Circumstantial evidence is
9 indirect evidence, that is proof of one or more facts from
10 which one can find or infer another fact.

11 So let me give you an example. If you are outside
12 and you start to feel water on your face, you look up, it's
13 raining, you personally observe that it's raining. You can
14 testify it was raining. That's direct evidence. If you're
15 inside your house and you hear the rain, you could testify, I
16 heard it raining. That's direct evidence. If, however,
17 you're inside your house and you walk outside and the
18 sidewalk is wet, you may testify it rained, but you didn't
19 see that rain or hear that rain. That would be
20 circumstantial evidence, the fact that the sidewalk is wet,
21 circumstantial evidence.

22 You can consider both direct and circumstantial
23 evidence in deciding the case, and the law allows you to give
24 equal weight to both, and it's up for you to decide how much
25 weight to give any type of evidence that you hear in the

1 case.

2 There are these things we call rules of evidence
3 which control what can come into evidence in the case. And
4 when an attorney asks a question or offers an exhibit into
5 evidence and a lawyer on the other side thinks that it is not
6 permitted by these rules of evidence, that attorney can
7 object. If I overrule the objection, then, the question can
8 be answered or the exhibit may be received. It's essentially
9 I have overruled the person's objection. But if I sustain
10 the objection, then, the question cannot be answered or the
11 exhibit cannot be received. And if I sustain an objection to
12 a question, you should ignore that question and not try to
13 guess what the answer would have been. And you shouldn't be
14 prejudiced for or against a lawyer or a party because they
15 make an objection, and regardless of whether I sustain or
16 overrule the objection. It's the duty of the attorneys to
17 represent their clients and sometimes that means they will
18 need to make objections.

19 As I said, I may order that certain evidence be
20 stricken from the record, and you are to ignore that
21 evidence.

22 Some evidence will be admitted for a limited
23 purpose, and that means that you should only consider it for
24 that certain purpose and not for other purposes, but I would
25 tell you when that happens.

1 So in deciding the facts of the case, you have to
2 decide which witnesses to believe and which witnesses not to
3 believe, and you can believe everything a witness says, or
4 only part of what the witness says, or nothing of what the
5 witness says, and that's up to you. You can consider a
6 number of different factors including, for example, the
7 witness' ability to hear or see or know the things that the
8 witness is testifying about, the quality of that witness'
9 memory, the manner in which they testify, any interest that
10 the witness may have in the outcome of the case, any motive,
11 bias or prejudice of the witness, any contradiction of the
12 witness by anything the witness said or wrote before trial or
13 by other evidence, the reasonableness of the witness'
14 testimony when considered in light of the other evidence
15 which you do believe.

16 There may be limitations imposed on the ability of a
17 witness to give an opinion. Normally a witness' testimony is
18 limited to facts, for example, as to what they saw or heard
19 or did. However, when a witness has some specialized
20 knowledge concerning a particular subject matter which might
21 assist an ordinary jury or an ordinary judge to understand
22 something that might be complicated or technical, that
23 witness is called an expert, an expert witness, and is
24 permitted to testify in greater latitude in giving their
25 opinion. And if a witness testifies based on their training,

1 qualifications or knowledge, you should try to evaluate the
2 testimony of this witness just like you would evaluate the
3 testimony of any other witness under those factors that I
4 just talked about. And you should also, if you hear the
5 testimony of an expert witness, evaluate their training,
6 their qualifications, knowledge of the subject matter
7 concerning what they're testifying, and you should realize
8 that the testimony of a witness is no more controlling than
9 any other witness because it is your judgment which is the
10 final answer insofar as these questions are concerned.

11 Now, this is a criminal case, and so there is three
12 basic rules about a criminal case that I need you to keep in
13 mind.

14 First, a defendant, Mr. Smith particularly, is
15 presumed innocent until he is proven guilty. And the
16 indictment, the charges brought by the government against
17 Mr. Smith, they are only an accusation and nothing more. It
18 is not proof of guilt nor is it proof of anything else. And,
19 therefore, Mr. Smith, he starts today with a clean slate.

20 Second, it is the government's burden to prove to
21 you -- it is their burden of proof in a criminal case, and
22 Mr. Smith, he has no burden to prove his innocence, to
23 present any evidence, or to testify, and he has the right to
24 remain silent. And so if he chooses to remain silent, you
25 can't consider his silence in arriving at your verdict.

1 Third, the government must prove Mr. Smith's guilt
2 beyond a reasonable doubt, and I will give you instructions
3 on this point later in the proceeding, but what is important
4 to remember is a criminal case is different than a civil
5 case, and in a criminal case the government has the burden of
6 proof to prove each of the essential elements beyond a
7 reasonable doubt.

8 Let me talk to you about your conduct as a juror.
9 So, first, during the trial you should not discuss with each
10 other the case. You shouldn't discuss with yourselves, the
11 jury, or anyone else anything about the case. At the end of
12 the case, after all of the testimony has been heard and all
13 of the evidence has been received, I will instruct you to
14 retire to the jury room and begin your deliberations.
15 However, until that time you are not to have any discussions
16 with each other about this case. And so I understand you're
17 going to be together while this case is proceeding, and
18 certainly you can talk about things like your job and your
19 vacations and yourselves, but what you shouldn't talk about
20 is the case itself because it's important not to form an
21 opinion prematurely.

22 Second, don't let anyone talk to you about the case
23 or about anyone who has anything to do with the case. Please
24 don't try to engage the court staff in discussions about the
25 case. And if someone tries to talk to you, please report it

1 to our courtroom security officer immediately.

2 It is important, also, that you not read any news
3 stories or articles or listen to the radio or television
4 about the case or anyone who in any way is connected with the
5 case. And so that includes, also, that you not conduct
6 research about the case, or not just about this specific case
7 but, for example, if you heard a term and you didn't
8 understand it, it would not be okay for you to go onto Google
9 and search that term and try to figure out what it means.
10 When we talk about research, that's what I mean. So you
11 shouldn't research the case, any matters in the case, any
12 individuals that are involved in the case. You shouldn't
13 look at dictionaries, reference materials, search the
14 internet. The point is that the information that you receive
15 about this case should come while you're in the courtroom
16 hearing evidence. You should not try to get any other
17 information about the case from any other source.

18 So, finally, until you retire to deliberate, you
19 should not discuss the case with anyone, even your fellow
20 jurors, and then after you retire to deliberate you can begin
21 to discuss the case with your fellow jurors, but you cannot
22 discuss the case with anyone else until you've returned a
23 verdict and the case is at an end.

24 What I like to say to people is think of yourselves,
25 the jury, as a collective. You are like a superhero. You

1 have a superpower. It is the power to return the verdict in
2 this case, but it only works if you are all together. So you
3 shouldn't deliberate when someone is gone. You shouldn't
4 deliberate by yourselves or on the side with other fellow
5 jurors. Everyone should be together.

6 I do hope that you find the case interesting, and I
7 do understand that many of you, not all of you, use cell
8 phones and the internet and other tools of technology, but
9 please do not use those to communicate electronically with
10 anyone about this case, and that does include your family and
11 friends. You can tell them that you are a juror in a case,
12 but please do not talk to them about the case until after you
13 have been discharged, and at that point you can speak with
14 them, but do not communicate with anyone about the case on
15 your cell phone, email, text messaging, Twitter, YouTube, any
16 type of blogs, website, internet chat rooms. That would also
17 mean you shouldn't go onto any social media while you're
18 deliberating a case and share information about the case
19 either. You don't want to receive any information regarding
20 the case.

21 Please do not make up your mind about what the
22 verdict should be until after you have gone to the jury room
23 and I have instructed you and given you the law and you've
24 begun your deliberations, and please keep an open mind.

25 I will also just remind you that the attorneys, the

1 parties, their representatives, the witnesses are not
2 permitted to talk with or socialize with members of the jury
3 during the trial in this case.

4 Also, we do have a court reporter, and that court
5 reporter is taking down everything that is said in court.
6 However, when you go back to deliberate, you will not have a
7 written transcript of what happened in the trial, and so you
8 have to make your decisions based on what you recall of the
9 evidence, so please pay attention.

10 I will provide you each with a notepad, and some of
11 you may prefer to take notes as the evidence is presented.
12 Other of you may not want to take notes. It's for you to
13 decide whether or not you want to take notes. I will tell
14 you and caution you that it's not necessary for you to take
15 notes, but it is necessary for you to carefully consider the
16 evidence in the case, but don't let the note taking interfere
17 with actually listening and considering the evidence. And if
18 you do take notes, do not discuss them with anyone until the
19 end of the case when you begin your deliberations. If you
20 choose not to take notes, just remember that it is your
21 individual responsibility to listen to the evidence and to
22 rely on your independent recollection of the evidence, and
23 don't be influenced by someone who may have taken notes.
24 Those notes are for their personal use or for your personal
25 use in refreshing your recollection, and so if you take

1 notes, you can refer to those. If someone else takes notes,
2 they can refer to those.

3 Now, when you're excused from the courtroom at the
4 end of the day, you will place your notes in a bag that is
5 provided to you, and those notes will remain in the
6 courthouse.

7 Once you begin your deliberations, you may have your
8 notes with you, but just note that one juror's notes are not
9 necessarily to be given more weight than the memory of
10 another person who did not take notes. Your notes are not
11 evidence and they do not take precedence over your
12 independent recollection of these proceedings. And once the
13 case is over, the courtroom deputy will collect your notes
14 and destroy them.

15 Jurors are not permitted to ask questions of
16 witnesses or the attorneys in this case, but if you are
17 unable to hear a witness or a lawyer, just raise your hand,
18 and that will tell me that you need something, either you
19 didn't hear what was asked or what was said, and we will make
20 sure that it's repeated. And, also, our courtroom security
21 officer, he is here to make sure that you all are
22 comfortable, that you have what you need, and so if someone
23 needs a break or there is something going on, please let him
24 know if there is a problem such as you're not comfortable, or
25 you can't hear, or you need something.

1 So as I said before, how we will handle things is
2 we're generally going to start at 9:30, maybe we would start
3 at 9:00 o'clock, and we'll typically go until about 5:00. We
4 will take approximately a one-hour lunch break usually around
5 12:00 to 1:00 and try to take a morning and afternoon recess
6 as well. If there is something that I need to understand
7 regarding your need for breaks, for example, please let the
8 courtroom deputy know that.

9 Now, sometimes I will need to talk with the
10 attorneys about certain things outside of your presence, and
11 those conferences are necessary to just ensure that the law
12 is properly applied, and sometimes I will handle those as I
13 did earlier this morning when the parties will approach the
14 bench and we turn on that white noise, and so in that
15 instance the court reporter is still recording what we say
16 but the white noise is played so that essentially others in
17 the room cannot hear what we're talking about. So sometimes
18 I think people may think this is very rude and not understand
19 it, but I do want to tell you that it is necessary. And
20 during those times, please feel free if you need to stand up,
21 stretch a little bit, please do so. I do think that helps
22 people. If sometimes it's just going to take longer, then,
23 we will take a recess and I will excuse you from the
24 courtroom so that you will be more comfortable. And
25 generally we try to keep those at a minimum because I value

1 your time and I know the parties value your time. So we're
2 trying to get through this case as quickly as possible but we
3 have to ensure, obviously, that all of the evidence is heard
4 and that the parties are given an opportunity to be heard.

5 When we start, each party will have an opportunity
6 to make an opening statement. Opening statement is not
7 evidence nor argument. It's just an outline of what a
8 particular party intends to prove, offered to help you follow
9 the evidence. And then we will start. The government will
10 present witnesses, and the attorney for the defendant can
11 cross-examine those witnesses. The defendant may then
12 present witnesses if he chooses to do so, and the government
13 can cross-examine those witnesses if they choose to do so.
14 After all of the witnesses have testified, I will give you
15 instruction on what the law is in this case, and the
16 attorneys will also make their closing arguments which
17 summarize and suggest their interpretation of the evidence to
18 you, and then you will deliberate, retire to deliberate on
19 your verdict.

20 Now, I do want to just make sure you understand who
21 is here and what our jobs are. Obviously, I am the Judge in
22 this case, which means that I make certain rulings regarding
23 the admissibility of evidence, other legal issues. I make
24 sure that everyone is doing what they're supposed to be
25 doing, make sure the jury has what they need, and just

1 generally supervise the trial process.

2 I do have our court reporter, who is over here to my
3 right, and she is taking down everything that's said. So
4 sometimes we may ask a witness to speak up or to repeat what
5 they say because it's important that she's able to make a
6 full record of what happens here.

7 We do have also my courtroom deputy, which is here
8 to my left, and she manages all of the evidence, makes sure
9 that that comes in, we keep track of it, coordinates the
10 audiovisual tools, coordinates our schedules, prepares
11 orders, generally assists me throughout this process.

12 Our courtroom security officer, who is your go-to
13 person and will help ensure that you are comfortable and have
14 what you need when you're deliberating but generally is there
15 to assist you, escort you, maintain order in the court.

16 I do also have a law clerk, which is up here on my
17 far right, who is also an attorney and generally assists me
18 in making sure I get things right.

19 Generally, like I said, we will break for lunch each
20 day, and you can either leave the courthouse for lunch, or
21 you can bring your lunch and snacks if you choose to do so.
22 There is a refrigerator available to you in the jury room,
23 and there are also vending machines in the courthouse on the
24 second floor. During lunch, you can choose to eat here if
25 you want to, but you can also choose to go outside or eat in

1 your car. Certainly, some jurors choose to eat here, others
2 choose to leave. And like I said before, we would expect
3 that you would talk to your fellow jurors but, please, as
4 I've already said, do not talk about the case until you have
5 retired to deliberate.

6 I think that those are all of the instructions that
7 I have to give you, and the attorneys should be done in just
8 a few moments, and we will proceed after that.

9 Ladies and gentlemen, they are almost done, and so
10 let me just tell you what will happen right after that so you
11 know what to expect. The clerk will call those of you that
12 have been selected as jurors and alternates, and you will
13 come here and sit wherever, and then we will swear in those
14 jurors. And after that, those that have been selected, we
15 will likely take a lunch break right after that to allow you
16 to get situated and have a bite to eat and take a break. And
17 then those that are not chosen, don't jump up and leave. It
18 will just take us another three to four minutes to get the
19 jury sworn in, and when we break for lunch then you can
20 leave, and you are excused for the remainder of the day. And
21 I will say in advance I very much appreciate that each of you
22 are here today.

23 Remember, courts are generally open, which means
24 that if you want to go into state or federal court and watch
25 a trial or the proceedings, courts are generally open and you

1 can do so, and I regularly have student groups and other
2 interested people come in and watch any hearings that I have,
3 so I will also just let you know that is also your option as
4 well.

5 Government, are you satisfied with the composition
6 of the jury?

7 MS. MONTOYA: Yes, Your Honor, thank you.

8 THE COURT: Defendant?

9 MR. ROBINSON: Yes, Your Honor.

10 (End of excerpt.)

11

12 CERTIFICATION

13

14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

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_____ /s/ _____

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Jill H. Trail

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April 19, 2023

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